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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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DISC

In the Matter of

Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Nampa, Idaho)

MM Docket No. 01-54  
RM-9918

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: March 9, 2004

Released: March 19, 2004

By the Chief, Video Services Division:

1. At the request of Idaho Independent Television, Inc. ("KTRV"), licensee of KTRV(TV), NTSC channel 12, Nampa, Idaho, the Commission has before it the Notice of Proposed Rule Making, 16 FCC Rcd 4466 (2001), proposing the substitution of DTV channel 13 for station KTRV(TV)'s assigned DTV channel 44. KTRV, Oregon Public Broadcasting ("Oregon Public"), and the State Board of Education, State of Idaho ("SBE") filed comments.<sup>1</sup> KTRV and the SBE filed reply comments.<sup>2</sup>

2. The SBE, licensee of noncommercial educational station KIPT(TV), Twin Falls, Idaho, filed comments opposing KTRV's channel substitution proposal claiming that it does not meet the two percent requirement for *de minimis* interference. The SBE states that according to its engineering study, using the time-shared "HDTV" computer program, the proposed DTV channel 13 at Nampa is predicted to cause interference to 2,422 persons within the KIPT(TV) Grade B contour, which amounts to 2.4 percent and is in excess of the 2% *de minimis* interference permitted by Section 73.623 of the Commission's Rules. SBE also contends, because of interference from the proposed DTV channel, 640 persons will lose their second primary television service and their only primary noncommercial television service. SBE argues that this loss of service would be contrary to the Commission's third television allotment priorities as set forth in the *Sixth Report and Order on Television Allocations*, 41 F.C.C. 148(1952), *i.e.* to "provide a choice of at least two television services to all parts of the United States."

3. Oregon Public, licensee of noncommercial educational station KTVR, La Grande,

<sup>1</sup> KTRV's comments were limited to stating its confirmation to construct and operate station KTRV-DT on Channel 13.

<sup>2</sup> After the record closed, SBE filed reply comments, IIT filed a Motion to Strike SBE's reply comments, and SBE filed an Opposition to Motion to Strike. We find that SBE's are untimely filed reply comments and therefore will not be considered. The Commission's Rules do not contemplate the filing of pleadings beyond the comment periods set forth in the Notice. Moreover, we find that SBE's reply comments do not provide information of decisional significance.

Oregon, states that while KTRV's proposal would result in less than 1% interference to the signal of station KTVR, the resulting interference would cause 102 viewers to lose their only primary television service and would cause 300 viewers to lose their only noncommercial educational service. Oregon Public notes that La Grande is located in a rural area where the population centers are located in isolated valleys between the numerous mountain ranges. Oregon Public argues that a few hundred people affected by KTRV's proposal are a significant issue because the people affected by the interference have no alternative primary service because of the terrain characteristics of the area. In addition, Oregon Public states that the proposal would also interfere with translator inputs and cable feeds in a manner that would cut off its signal to thousands of people. Oregon Public believes the public interest would be served if KTRV remained on DTV channel 44 rather than undercut the Commission's allotment policy of providing a first service to every prospective television viewer.

4. In reply, KTRV states that two separate consulting engineers and the Commission have determined that the KTRV-DT proposal fully complies with the Commission's 2 percent criterion. KTRV states that the interference discrepancy between the SBE's conclusion and those of KTRV's suggests that the SBE's analysis program is not compliant with OET Bulletin No. 69 as required by Section 73.623(c)(2). Furthermore, KTRV rejects Oregon Public's contention that a different standard should be applied to rural areas submitting that the Commission has already determined that DTV interference at less than 2% of a service population is *de minimis*. KTRV notes that the Commission stated in *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418 ¶81 (1998) ("*Reconsideration of Sixth Report and Order*") that:

We therefore believe that our 2 percent *de minimis* standard will provide major relief for stations seeking to increase their facilities. We do not find that a more complicated standard that would take into account aggregate interference, include different levels of interference and geographic considerations, or limit interference increases to only NTSC as suggested in the recent filings, is necessary. Such a standard would also, be more complex and difficult for broadcasters and the Commission to apply and administer.

Accordingly, KTRV submits that the Commission has already rejected arguments such as those advanced by SBE and Oregon Public and states that the public interest would be served by permitting KTRV to operate its analog and digital facilities on adjacent channels. In addition, KTRV maintains that operation on the VHF channel would improve coverage availability for viewers throughout the mostly rural market.

#### Discussion

5. Based upon our review of the record, we believe that the public interest would be served by substituting DTV channel 13 for DTV channel 44. Section 73.623(c) specifies the protection requirements for DTV applications with respect to other DTV stations and allotments, and NTSC stations. In general, interference to such stations affecting less than 2 percent of the population they

serve is considered *de minimis*. Oregon Public concedes that the interference to its station is less than 1 percent, a number that our analysis confirms. In addition, our calculations using the Longley-Rice propagation tool outlined in OET Bulletin No. 69 finds the interference level to station KIPT(TV) to be less than 2 percent. Thus, the KTRV proposal is fully compliant with our Rules.

6. Further, we must reject objectors' contentions that we should look beyond the *de minimis* or 2 percent rule where existing service loss is involved. In adopting the DTV Table of Allotments, the Commission found it necessary in some instances to allow increased interference to NTSC service in order to provide DTV stations the opportunity to replicate their existing NTSC service to the maximum extent possible. The Commission's goal then, and now, was to provide for the transition to DTV service so that the benefits of this new technology can be brought to the American people in an expeditious and efficient manner. To handicap the provision of this new service by artificially limiting DTV changes or otherwise limiting the efficient provision of DTV service would thwart this goal. In adopting the 2 percent standard for DTV, the Commission balances the need to provide DTV licensees with maximum flexibility in constructing their DTV facilities with our desire to maintain existing NTSC service during the transition. To the extent that there may be some minor loss of NTSC service in this case, we note that such service loss is temporary and will likely be restored after completion of the DTV transition. Finally, we note that grant of this compliant proposal would allow station KTRV(TV) to co-locate its analog and DTV facilities on adjacent channels. This could result in significant savings for a small market television station like KTRV(TV).

7 DTV channel 13 can be allotted to Nampa, Idaho, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) with a "c" designation at coordinates (43-45-18 N. and 116-05-52 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* interference that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station KTRV-DT with the following specifications:

<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
ID Nampa	13c	17	829	391

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 3, 2004, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Nampa, Idaho	13c, 24

9. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Idaho Independent Television, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 13c in lieu of DTV Channel 44 for station WTRV-TV.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**FEDERAL COMMUNICATIONS COMMISSION**

**Barbara A. Kreisman  
Chief, Video Division  
Media Bureau**